

SENATE No. 1338

The Commonwealth of Massachusetts

PRESENTED BY:

Karen E. Spilka

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act relative to local excise tax on charges of meals served to the public.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Karen E. Spilka	Second Middlesex and Norfolk
Thomas P. Conroy	13th Middlesex
David P. Linsky	5th Middlesex
Patricia D. Jehlen	Second Middlesex
Pam Richardson	6th Middlesex
Susan C. Fargo	Third Middlesex

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. S01803 OF 2007-2008.]

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

AN ACT RELATIVE TO LOCAL EXCISE TAX ON CHARGES OF MEALS SERVED TO THE PUBLIC.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority
of the same, as follows:*

1 SECTION 1. Chapter 64B of the General Laws, as appearing in the 2006 Official Edition, is
2 hereby amended after Chapter 64K by adding the following new Chapter: --

3 Chapter 64L. Section 1. Notwithstanding the provisions of any specific or general law to the
4 contrary, any city or town which accepts the provisions of this section shall be authorized to
5 impose a local excise tax upon the sale of meals served to the public by any vendor located
6 within such city or town at a rate of one per cent of the total amount of the sales price of said
7 meal. The vendor shall pay the local excise tax imposed under the provisions of this section to
8 the commissioner at the same time and in the same manner as the excise tax due the
9 commonwealth. All sums received by the commissioner under this section as excise, penalties or
10 forfeitures, interest, costs of suit and fines shall at least quarterly be distributed, credited and paid
11 by the state treasurer upon certification of the commissioner to each city or town that has adopted

the provisions of this section in proportion to the amount of such sums received from the sale of meals to the public in each such city or town.

For the purposes of this chapter, all words herein shall have the same definitions as set forth in Chapter 64H. This section shall only take effect in a city or town accepting the provisions of this section by a majority vote of the city council with the approval of the mayor, in the case of a city with a Plan A, Plan B, or Plan F charter; by a majority vote of the city council, in the case of a city with a Plan C, Plan D, or Plan E charter; by a majority vote of the annual town meeting or a special meeting called for the purpose, in the case of a municipality with a town meeting form of government; or by a majority vote of the town council, in the case of a municipality with a town council form of government. The provisions of this section shall take effect on the first day of the calendar quarter following thirty days after such acceptance, or on the first day of such later calendar quarter as the city or town may designate. The city or town, in accepting the provisions of this section, may not revoke or otherwise amend the applicable local tax rate more often than once in any twelve month period. The commissioner of the department of revenue shall make available to any city or town requesting such information the total amount of local excise tax on the sale of meals to the public collected in the preceding fiscal year in the city or town requesting the information.

Section 2. The following sales and the gross receipts therefore shall be exempt from the tax imposed by this chapter: (a) Sales which the commonwealth is prohibited from taxing under the constitution or laws of the United States; (b) Sales of tangible personal property in transit or stored at points of entry intended for export or import or which the vendor is obligated under the terms of any agreement to deliver (i) to a purchaser outside the commonwealth or to a designee

outside the commonwealth of a purchaser outside the commonwealth or (ii) to an interstate carrier for delivery to a purchaser outside the commonwealth or to a designee outside the commonwealth of a purchaser outside the commonwealth; (c) Casual and isolated sales by a vendor who is not regularly engaged in the business of making sales at retail; (d) Sales to the United States, the commonwealth or any political subdivision thereof, or their respective agencies; (e) Sales to any corporation, foundation, organization or institution, which is exempt from taxation under the provisions of section five hundred and one (c)(3) of the Federal Internal Revenue Code, as amended, and in effect for the applicable period; provided, however, that such sales shall not be exempt unless (i) the tangible personal property or services which are the subject of such sales is used in the conduct of such religious, charitable, educational or scientific enterprise, (ii) such corporation, foundation, organization or institution shall have first obtained a certification from the commissioner stating that it is entitled to such exemption, and (iii) the vendor keeps a record of the sales price of each such separate sale, the name of the purchaser, the date of each such separate sale, and the number of such certificate. The certificate of exemption issued by the commissioner under clause (ii) shall be effective for a period of five years from the date of its issuance or until January first, two thousand twelve, whichever shall last expire provided that ninety days prior to said date the commissioner shall notify such corporation, foundation, organization or institution of the expiration date of said certificate. Such corporation, foundation, organization or institution must obtain from the commission a renewal of such certificate in order to be entitled to a continuance of such exemption beyond the expiration date of any existing certificate.

(f) Sales of food products for human consumption. "Food products" includes cereals and cereal products, flour and flour products, milk and milk products, including ice cream, oleomargarine,

57 meat and meat products, fish and fish products, eggs and egg products, vegetables and vegetable
58 products, fruit and fruit products, soft drinks, herbs, spices and salt, sugar and sugar products,
59 candy and confectionery; coffee and coffee substitutes, tea, cocoa and cocoa products; and ice
60 when used for household consumption. "Food products" does not include alcoholic beverages as
61 defined in chapter one hundred and thirty-eight except as hereinafter provided, medicines, tonics
62 and preparations in liquid, powdered, granular, tablet, capsule, lozenge and pill form sold as
63 dietary supplements or adjuncts. "Food products" does not include meals consisting of any of the
64 items defined as food products in this paragraph for consumption on or off the premises where
65 sold. "Honor snack tray", any vending arrangement in which only candy or snacks are available
66 in an open tray for the benefit of employees in an establishment that normally does not sell food
67 or food products and for which payment is made on the honor system. "Meals" shall mean any
68 food or beverage, or both, prepared for human consumption and provided by a restaurant, where
69 the food or beverages is intended for consumption on or off the restaurant premises, and includes
70 food or beverages sold on a "take out" or "to go" basis, whether or not they are packaged or
71 wrapped and whether or not they are taken from the premises of the restaurant. "Restaurant",
72 shall mean any eating establishment where food, food products, or beverages are provided and
73 for which a charge is made, including but not limited to, a cafe, lunch counter, private or social
74 club, cocktail lounge, hotel dining room, catering business, tavern, diner, snack bar, dining room,
75 vending machine, and any other place or establishment where food or beverages are provided,
76 whether stationary or mobile, temporary or permanent; provided, however, that delicatessen,
77 grocery, market or bakery stores shall not be considered eating establishments within the
78 meaning of this chapter except for any part of such a store which engages, in the sale of dinners,
79 luncheons, barbecued chicken, other than barbecued chicken sold whole and unsliced,

80 sandwiches, snacks, pizzas, and other similar items which are commonly sold at snack bars,
81 coffee shops or luncheon counters; provided, further, that such stores shall not be deemed to be
82 restaurants under this chapter based solely on the preparation and sale of prepared meat, poultry
83 and fish items if such sales constitute less than a major portion of the total sale of such stores;
84 and provided, further, that a vending machine or honor snack tray shall not be considered an
85 eating establishment within the meaning of this chapter in the instance in which it sells only
86 snacks or candy with a sales price of less than \$5.00; and, provided further, that a bed and
87 breakfast establishment or bed and breakfast home, as defined in chapter sixty-four G, shall not
88 be considered an eating establishment within the meaning of this chapter where the value of a
89 breakfast served is included in the rent subject to tax under said chapter sixty-four G. The
90 following food or beverages sold by a restaurant for consumption off the restaurant premises
91 shall not be deemed to be a meal for the purposes of this chapter:-- (a) Food sold by weight,
92 liquid or dry measure, count, or in unopened original containers or packages, including, but not
93 limited to, meat, bread, milk, specialty foods, cream and ice cream; provided, that such foods are
94 commonly sold in such manner in a retail food store which is not a restaurant; (b)Beverages in
95 unopened original containers or packages when sold as a unit having a capacity of at least
96 twenty-six fluid ounces; and (c) Bakery products including but not limited to doughnuts,
97 muffins, bagels, and similar items sold in units of six or more. Prepared meals, snacks,
98 sandwiches, food platters, poultry, fish or meat items, or other food combinations, to the extent
99 that such items are sold by a restaurant whose principal business is the preparation or sale of
100 such items in such form as to be available for immediate consumption without further significant
101 preparation, whether for on or off premise consumption, shall not be excluded under clause (a),
102 (b), or (c). (g) (i) Sales of livestock and poultry of a kind which ordinarily constitute food for

human consumption; (ii) sales of feed, including the bags in which the feed is customarily contained, for livestock and poultry of a kind which ordinarily constitute food for human consumption or are to be sold in the regular course of business or for animals produced for research, testing, or other purposes relating to the promotion or maintenance of the health, safety or well being of human beings or animals or for fur-bearing animals, the pelts of which are sold in the regular course of business; (iii) sales of fertilizer, including ground limestone, hydrated lime, insecticides, fungicides, seed inoculants, seed disinfectants and plant hormones, as well as other substances commonly regarded in the same category and for the same use; and (iv) sales of plants, including parts of plants, suitable for planting to produce food for human consumption or when such plants, including parts thereof or the produce thereof, are to be sold in the regular course of business, including such items as seed potatoes, onion sets, asparagus roots, berry plants or bushes, and fruit trees. (h) meals prepared by employees thereof and served in any hospital, sanatorium, convalescent or nursing home, or boarding home for the aged licensed under section seventy-one of chapter one hundred and eleven or in any institution or private house licensed under section twenty-nine of chapter nineteen; meals prepared by the members thereof and served on its premises by any church or synagogue or by any church or synagogue organization to any organization of such church or synagogue the proceeds of which are to be used for religious or charitable purposes; meals served to a resident in a facility providing continuing care to an individual which facility must provide a disclosure statement to a prospective resident as required by section seventy-six of chapter ninety-three, meals served in an assisted living residence certified pursuant to the provisions of chapter nineteen D; meals furnished by any person while transporting passengers for hire by air to or from any place within the commonwealth, meals furnished to any organization in which membership is limited to

persons sixty years of age or over or to elderly or handicapped persons residing in a housing project qualifying under section thirty-eight to forty, inclusive, of chapter one hundred and twenty-one B and said organization has previously filed with the commissioner, on a form approved by the commissioner, satisfactory proof of its eligibility hereunder; and meals furnished to students by an educational institution which normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on; and meals served by summer camps for children eighteen years of age or under or developmentally disabled individuals; provided, however, that such summer camp which offers its facilities off-season to individuals sixty years of age or over for a period not to exceed thirty days in any calendar year shall not lose its exemption hereunder; and meals furnished through programs established under section one L of chapter fifteen.

For the purposes of this section a developmentally disabled individual shall mean an individual who has a severe chronic disability which:

(A) is attributable to a mental or physical impairment or combination of mental and physical impairments;

(B) is likely to continue indefinitely;

(C) results in substantial functional limitations in three or more of the following areas of major life activity: (i) self-care; (ii) receptive and expressive language; (iii) learning; (iv) mobility; (v) self-direction; (vi) capacity for independent living; and (vii) economic self-sufficiency; and

146 (D) reflects the individual's need for a combination and sequence of special, interdisciplinary,
147 or generic care, treatment, or other services which are of lifelong or extended duration and are
148 individually planned and coordinated.

149 (i) sales of tangible personal property and meals as defined by this chapter and purchased with
150 federal food stamps and not otherwise exempt under this chapter.

151 (j) sales of tangible personal property or meals as defined by this chapter and purchased by any
152 person 65 years of age or older if such purchase of tangible personal property or meals is offered
153 by the vendor at a specially reduced price for persons 65 years of age or older.

154 SECTION 3. This Act shall take effect upon passage.